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Via Facsimile – (914) 390-4179

The Honorable Nelson S. Román, U.S.D.J.

United States District Court

Southern District of New York

300 Quarropas Street

White Plains, New York 10601

Re: Post Office Square, LLC et. al. v. Village of Spring Valley, et al.

Docket No. 18-cv-9687(NSR)

Dear Judge Román:

This Office represents all Defendants in this matter above-captioned. This letter is sent to request a Pre-Motion Conference for filing a Motion to Dismiss the Complaint filed by the Plaintiffs. This Motion would be based upon FRCP Sections 12(b)1 and 12(b)6. Pursuant to your Rules, this Pre-Motion Letter stays the service of any Answer.

The Plaintiffs bring this claim only under 42 U.S.C. Section 1983 seeking monetary damages based upon alleged actions of the Defendants Village of Spring Valley, New York and its Board of Trustees ("collectively the Defendant Village') and Alan Simon who is the Mayor of the Village of Spring Valley, New York ("Defendant Mayor"). According to the Complaint, the Plaintiffs were granted by a Development Agreement ("Agreement") signed by the Plaintiff Post Office Square, LLC ("Plaintiff Company") with the Defendant Village in November 13, 2009 (Complaint at para.11). The Plaintiff Larry Weinstein ("Plaintiff Weinstein") was not a party to that Agreement. Plaintiff Weinstein only signed the Agreement in a representative, not any individual, capacity.

The Agreement called certain property to be conveyed to the Plaintiff Company by the Defendant Village. That Agreement required the Plaintiff Company to proceed with the construction of a Building in the Village and had many provisions related to the progress of construction. The seminal provision of the Agreement was at Article 11, Section 2.01 which had a "reverter" clause. (Id. at para. 21) That reverter clause required that construction commence as required and in the event construction did not proceed then the Plaintiff Company was required

to "re-convey to the Village by bargain and sale deed in its "as is" condition any property conveyed hereby". There were other provisions in the Agreement that provided for regular updates by the Plaintiff Company to the Defendant Village on construction progress; the requirement that the Plaintiff Company properly proceed to complete the construction in a timely and professional manner and other requirements of the Plaintiff Company. The Plaintiffs admit that the Village determined that the Plaintiff Company was in default of the Agreement (Id.) and that the Defendant Village sought judicial relief in New York State Supreme Court (the "State Court Litigation") to determined that the property was to revert to the Defendant Village because of the failure of the Plaintiff Company to comply with the Agreement. (Id.)

With regard to Plaintiffs' Complaint against the Defendant Mayor, the Plaintiffs do not claim that the Defendant Mayor was involved with any drafting or execution of the Agreement. The sparse claim against the Defendant Mayor "executed a plan" to have the property revert to the Defendant Village (Id. at 23) without any details of the supposed plan and that the Defendant Mayor was involved with the filing of the State Court litigation to declare that the Plaintiffs had no further rights in the property or project. (Id.). The Plaintiffs in their Complaint further acknowledge that the State Court Litigation to declare the rights of the Plaintiffs and Defendants has already been initiated (Id. at 30) and this State Court Litigation is still proceeding. Based on this facts as deemed to be true, because none of the Defendants have taken either possession of the subject property or project or divested the Plaintiff Company of any title to the property, this Federal Court Action is manifestly not ripe for adjudication by this Court. (See, Kittay v. Giuliani, 112 F. Supp.2d 342 (S.D.N.Y. 2000).

In addition to not being ripe, this Federal Court action states no claim under 42 U.S.C. Section 1983. It is settled law that any "rights" to be enforced in any Section 1983 action depends on any rights acquired by a Plaintiff under State Law. (Walz v. Town of Smithtown, 46 F.3d 162 (2nd Cir. 1995)). The Plaintiffs allege no "right" under New York State Law to acquire any property or to construction any project. Rather, Plaintiffs rely on the Agreement, yet the Agreement expressly included a "reverter" clause that by its own terms caused any title and interest in the property and project to revert to the Defendant Village. Plaintiffs cannot and do not claim otherwise in their Federal Court litigation about the basis for this Section 1983 Action. As such, no Section 1983 claim is properly stated here or in any Amended Complaint.

As for the Claim against the Defendant Mayor, the Plaintiffs in their Federal Court Complaint fail to state any non-speculative claim with sufficient personal involvement of the Defendant Mayor causing damages. Mace v. Co. of Sullivan, 2009 WL 413503(S.D.N.Y.2009) and Jeune v. Crew, 2017 WL 4357382 (E.D.N.Y. 2017). Likewise, the Plaintiffs' Complaint does not properly set forth a time frame for any actions by the Defendant Mayor and alleged damages to the Plaintiffs of enough temporal proximity to require the Defendant Mayor to answer this Complaint. (Ehrlich v. Dep't of Educ. of City of New York, 2012 WL 424991 (S.D.N.Y. 2012). Furthermore, dismissal against the Defendant Mayor is warranted based on his immunity defenses. (Harlow v. Fitzgerald, 457 U.S. 800 (1982) and to the extent claims against the Defendant Mayor are asserted in his official capacity, dismissal is warranted as being

redundant of claims against the Village Defendants. (Ferreira v. Town of East Hampton, 56 F. Supp.3d 211 (E.D.N.Y. 2014). Otherwise stated, Plaintiffs Complaint fails under the mandates of Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009) to state any cause of action.

Furthermore, any and all claims by the individual Plaintiff Weinstein have no basis factual or legal before this Federal Court. Plaintiff Weinstein was not a party to the controlling Agreement between the Plaintiff Company and the Defendants. Plaintiff Weinstein has asserted no individual standing basis to bring any claims. Moreover, Plaintiff Weinstein has alleged no recognized protected rights that exist under state law that were damaged by any actions of the Defendants. The individual Plaintiff Weinstein has no private right of action under Section 1983 that has remedies in this Section 1983 Litigation. (Ying Li v. City of New York, 246 F. Supp. 3d 578 (E.D.N.Y. 2017)). Plaintiff Weinstein has no standing derivate of the Plaintiff Company. (Morgan v. City of New York, 166 F. Supp.2d 817 (S.D.N.Y. 2001). As such, a dismissal Plaintiff Weinstein as a Party is required as a matter of law.

Finally, another basis for dismissal of the Plaintiffs' Federal Court Complaint is because of the doctrine of abstention. Plaintiffs' admit (and if fact assert as a basis for their Federal Court Complaint at para. 21)) that the Defendant Village has commenced and there is pending the State Court Litigation where the very rights asserted by the Plaintiffs before this Court are to be adjudicated. As such the abstention of this Court is required under Younger v. Harris, 431 U.S.434 (1977) as applied to civil actions in Trainor v. Hernandez, 431 U.S.434 (1977). That State Court Litigation will clearly inform all of what rights, if any, the Plaintiff Company has to the Project and Property

Respectively submitted,

Dennis E. A. Lynch

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